No. 886

FILED
FEB 21 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

J. D. DRISCOLL and W. D. NOLAND, Trustees for Howard Trust Estate, Ltd., an express trust estate,

Petitioners,

against

THE HOWARD-VAUGHAN CO., INC., a corporation; JOHN D. ROCKEFELLER, JR.; STANDARD OIL COMPANY OF NEW JERSEY, a corporation; STANDARD OIL COMPANY (NEW JERSEY), a corporation; SOCONY-VACUUM OIL COMPANY INCORPORATED, a corporation; ETHYL CORPORATION (whose corporate name formerly was ETHYL GASOLINE CORPORATION), a corporation; GENERAL MOTORS CORPORATION, a corporation; E. I. DU PONT DE NEMOURS & CO., INC., a corporation,

Respondents.

BRIEF OF RESPONDENT SOCONY-VACUUM OIL COMPANY, INCORPORATED.

Stated succinctly, there is no question of law to be reviewed. The original order was in no sense a final one, was fully discretionary and gave the petitioners the right to serve an amended complaint in order to comply with Rule 8(a) of the Federal Rules of Civil Procedure. A perusal of the complaint and exhibits (fols. 25-311) is thoroughly convincing that the original order was amply justified.

The petitioners are badly informed as to the applicability of the Federal Rules of Civil Procedure. If by some feat of mental gymnastics it could be considered that their pleading is one based on copyright, it is still governed by the Federal Rules of Civil Procedure because, effective September 1, 1939, this Court amended Rule 1 of the Copyright Rules, 17 U. S. C. A. following Section 25, to provide that copyright actions be governed by the Federal Rules of Civil Procedure. Thus there are uniform rules of pleading and the petitioners can be stopped from indulging in their prolixity and confusion.

The petition for writ should be denied.

Respectfully submitted,

HERBERT C. SMYTH, JR.,
Counsel for Respondent,
Socony-Vacuum Oil Company Incorporated.

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FEB 24 1945
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CLERK

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Supreme Court of the United States

OCTOBER TERM, 1944

J. D. DRISCOLL and W. D. NOLAND, Trustees for Howard Trust Estate, Ltd., an express trust estate,

Petitioners,

against

THE HOWARD-VAUGHAN CO., INC., a corporation; JOHN D. ROCKEFELLER, JR.; STANDARD OIL COMPANY OF NEW JERSEY, a corporation; STANDARD OIL COMPANY (New Jersey), a corporation; SOCONY-VACUUM OIL COMPANY INCORPORATED, a corporation; ETHYL CORPORATION (whose corporate name formerly was ETHYL GASOLINE CORPORATION), a corporation; GENERAL MOTORS CORPORATION, a corporation; E. I. DU PONT DE NEMOURS & CO., INC., a corporation,

Respondents.

BRIEF ON BEHALF OF JOHN D. ROCKEFELLER, JR., A RESPONDENT, IN OPPOSITION TO PETITIONERS' APPLICATION FOR WRIT OF CERTIORARI.

WILLIAM DEAN EMBREE,
15 Broad Street,
New York 5, N. Y.,
Counsel for Respondent,
John D. Rockefeller, Jr.

MILBANK, TWEED & HOPE,
WILLIAM J. O'CONNELL,
Of Counsel.

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ARGUMENT.

POINT I.

There is nothing in the order of the Circuit Court to move the Supreme Court to review it.

The question presented is whether the Circuit Court of Appeals committed error in dismissing the appeal from the District Court's order on the ground that the order in question was interlocutory and, hence, not appealable under the provisions of the Judicial Code limiting the jurisdiction of the Circuit Court of Appeals to a review of final decisions (Judicial Code, § 128, 28 U. S. C. A., § 225). The record clearly shows that the order of the District Court gave leave to petitioners to serve an amended complaint (R. 119). The decisions of all Federal courts are uniform to the effect that such an order is not a final one. No citation of authority is necessary to sustain this fundamental proposition.

Under these circumstances it is quite apparent that the Circuit Court of Appeals properly dismissed the appeal. None of the reasons for the granting of a writ, as set forth in Rule 38 of the Rules of this Court, is present in the case.

POINT II.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

William Dean Embree,
15 Broad Street,
New York 5, N. Y.,
Counsel for Respondent,
John D. Rockefeller, Jr.

Milbank, Tweed & Hope,
William J. O'Connell,
Of Counsel.